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115TH CONGRESS
2D SESSION

H. R. 5799

To amend title XIX of the Social Security Act to require as a condition of receipt of full Federal medical assistance percentage under Medicaid that State Medicaid plans have in place certain drug utilization review activities.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2018

Mrs. BLACKBURN (for herself, Mr. BARR, and Mr. KNIGHT) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend title XIX of the Social Security Act to require as a condition of receipt of full Federal medical assistance percentage under Medicaid that State Medicaid plans have in place certain drug utilization review activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicaid Drug Review, Utilization, Good Governance Improvement Act'' or the ''Medicaid DRUG Improvement Act''.

SEC. 2. MEDICAID DRUG UTILIZATION REVIEW.

(a) STATE PLAN REQUIREMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (82), at the end, by striking ''and'';

(2) in paragraph (83), at the end, by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (83) the following new paragraph:

''(84) provide that the State is in compliance with the drug review and utilization requirements under subsection (nn)(1).''.

(b) DRUG REVIEW AND UTILIZATION REQUIREMENTS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

''(nn) DRUG REVIEW AND UTILIZATION REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of subsection (a)(84), the drug review and utilization requirements under this subsection are, subject to paragraph (3) and beginning October 1, 2019, the following:

''(A) CLAIMS REVIEW LIMITATIONS.—

''(i) IN GENERAL.—The State has in place—

''(I) safety edits (as specified by the State) for subsequent fills for opioids and a claims review automated process (as designed and implemented by the State) that indicates when an individual enrolled under the State plan (or under a waiver of the State plan) is prescribed a subsequent fill of opioids in excess of any limitation that may be identified by the State;

''(II) safety edits (as specified by the State) on the maximum daily morphine equivalent that can be prescribed to an individual enrolled under the State plan (or under a waiver of the State plan) for treatment of chronic pain and a claims review automated process (as designed and implemented by the State) that indicates when an individual enrolled under the plan (or waiver) is prescribed the morphine equivalent for such treatment in excess of any limitation that may be identified by the State; and

"(III) a claims review automated process (as designed and implemented by the State) that monitors when an individual enrolled under the State plan (or under a waiver of the State plan) is concurrently prescribed opioids and—

"(aa) benzodiazepines; or

"(bb) antipsychotics.

"(ii) MANAGED CARE ENTITIES.—The State requires each managed care entity (as defined in section 1932(a)(1)(B)) with respect to which the State has a contract under section 1903(m) or under section 1905(t)(3) to have in place, subject to paragraph (3), with respect to individuals who are eligible for medical assistance under the State plan (or under a waiver of the State plan) and who are enrolled with the entity, the limitations described in subclauses (I) and (II) of clause (i) and a claims review automated process described in subclause (III) of such clause.

"(iii) RULES OF CONSTRUCTION.—Nothing in this subparagraph may be con-

strued as prohibiting a State or managed care entity from designing and implementing a claims review automated process under this subparagraph that provides for prospective or retrospective reviews of claims. Nothing in this subparagraph shall be understood as prohibiting the exercise of clinical judgment from a provider enrolled as a participating provider in a State plan (or waiver of the State plan) or contracting with a managed care entity regarding the best items and services for an individual enrolled under such State plan (or waiver).

''(B) PROGRAM TO MONITOR ANTIPSYCHOTIC MEDICATIONS BY CHILDREN.—The State has in place a program (as designed and implemented by the State), including such a program that the State had in place before the date of the enactment of this subsection, to monitor and manage the appropriate use of antipsychotic medications by children enrolled under the State plan (or under a waiver of the State plan) and submits annually to the Secretary such information as the Secretary may

require on activities carried out under such program for individuals not more than the age of 18 years generally and children in foster care specifically.

"(C) FRAUD AND ABUSE IDENTIFICATION.—The State has in place a process (as designed and implemented by the State), including such a process that the State had in place before the date of the enactment of this subsection, that identifies potential fraud or abuse of controlled substances by individuals enrolled under the State plan (or under a waiver of the State plan), health care providers prescribing drugs to individuals so enrolled, and pharmacies dispensing drugs to individuals so enrolled.

"(D) REPORTS.—The State shall include in the annual report submitted to the Secretary under section 1927(g)(3)(D) information on the limitations, requirement, program, and processes applied by the State under subparagraphs (A) through (C) in accordance with such manner and time as specified by the Secretary.

"(2) ANNUAL REPORT BY SECRETARY.—For each fiscal year beginning with fiscal year 2020, the Secretary shall submit to Congress a report on the

most recent information submitted by States under paragraph (1)(D).

''(3) EXCEPTIONS.—

''(A) CERTAIN INDIVIDUALS EXEMPTED.—The drug review and utilization requirements under this subsection shall not apply with respect to an individual who—

''(i) is receiving—

''(I) hospice or palliative care; or

''(II) treatment for cancer;

''(ii) is a resident of a long-term care facility, of a facility described in section 1905(d), or of another facility for which frequently abused drugs are dispensed for residents through a contract with a single pharmacy; or

''(iii) the State elects to treat as exempted from such requirements.

''(B) EXCEPTION RELATING TO ENSURING ACCESS.—In order to ensure reasonable access to health care, the Secretary may waive the drug review and utilization requirements under this subsection, with respect to a State, in the case of natural disasters and similar situations, and in the case of the provision of emergency

services (as defined for purposes of section 1860D–4(c)(5)(D)(ii)(II)).''.

(c) MANAGED CARE ENTITIES.—Section 1932 of the Social Security Act (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

''(i) DRUG UTILIZATION REVIEW ACTIVITIES AND REQUIREMENTS.—Beginning not later than October 1, 2019, each contract under a State plan with a managed care entity (other than a primary care case manager) under section 1903(m) shall provide that the entity is in compliance with the applicable provisions of section 438.3(s)(2) of title 42 of the Code of Federal Regulations, section 483.3(s)(4) of such title, and section 483.3(s)(5) of such title, as such provisions were in effect on March 31, 2018.''.

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